

REMARKS

Substantive consideration of the application as amended is requested. A restriction requirement was raised with respect to three groups of claims. Applicants hereby elect Group III, namely claims 36-43, without traverse. The non-elected claims 1-35 have been cancelled without prejudice to presentation in a divisional application.

A species restriction was also suggested relative to the claims of Group III, with five species being identified. Applicant hereby elects the species indicated to correspond to claims 41-43. This election is made with traverse, at least with respect to claims 36-38(A). In particular, it is believed that the examination and search burden is not increased if claims 36-38(A) and claims 41-43 are examined together. Claim 41 calls for coupling a dynamic stabilization system across a motion segment in which the system includes at least one bone anchor that permits natural motion of the disc by deforming a portion of the anchor. Claim 36 calls for positioning a stabilization element that is coupled to at least two motion segments by bone anchors. One of the bone anchors is defined as coupled to permit deflection of the bone anchor. Thus, the subject matter of claim 36 overlaps the last element of claim 41. The additional feature to be searched – the device to restore natural disc motion – is found in elected claim 41. Thus, a search for prior art relevant to claim 41 would necessarily encompass prior art relevant to claim 36.

Moreover, claim 38, which depends from claim 36, adds the further step of replacing all or part of a nucleus with a polymeric prosthesis having properties substantially similar to the physical properties of the natural disc nucleus. Such a prosthesis would function to "at least partially maintain or restore the natural motion of the disc at the motion segment", as recited in claim 41. Again, a search for prior art relevant to claim 41 would necessarily uncover prior art relevant to claim 38.

Thus, Applicants request removal of the restriction requirement as between elected claims 41-43 and claims 36-38(A). The non-elected species claims 38(B), 39 and 40 have been cancelled without prejudice to treatment in a divisional application.

Applicants have added new claims 44-47 which depend from elected claim 41, so these claims are therefore within the elected species. Applicants have further proposed new independent claim 48 and its dependent claims 49-51. Claim 48 is similar to elected

claim 41, although the last element – coupling a dynamic stabilization system – is broader in new claim 48. In particular, while claim 41 calls for the stabilization system to include a bone anchor, claim 48 does not require this element. Instead, the dynamic stabilization system in claim 48 is defined as permitting natural motion of the disc once coupled across the motion segment. It is believed that claim 48 is generic to claim 41 and therefore properly considered with this elected species. Dependent claims 49-51 are substantially similar to claims 42-44.

Reconsideration of the present application as amended is requested. Applicants have cancelled claims 1-35 and 38-40 as directed to non-elected inventions and species, all without prejudice to presentation in divisional applications. Applicants have provisionally elected claims 41-43 and the invention and species associated therewith. Applicants have traversed the restriction requirement with respect to claims 36-38 and request that these claims be retained for examination. Finally, Applicants have added new claims 44051 that are believed to fall within the elected invention and species.

Respectfully Submitted,

*Michael D. Beck*

Maginot, Moore & Beck, LLP  
Chase Tower  
111 Monument Circle, Suite 3250  
Indianapolis, Indiana 46204-5109  
(317) 638-2922

Michael D. Beck  
Attorney for Applicants  
Registration No. 32,722